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In re Application of
ASSMUS et al.
Application No.: 09/355,149
PCT No.: PCT/EP98/03086
Int. Filing Date: 26 May 1998
Priority Date: 06 June 1997
Attorney Docket No.: 2345/87
For: DEVICE AND METHOD FOR . . .
TRANSMISSION TECHNIQUE

DECISION ON
PETITION UNDER
37 CFR 1.137(b)

This decision is in response to the petition entitled "PETITION TO REVIVE UNDER 37 C.F.R. 1.137(b)" filed 22 July 1999.

BACKGROUND

On 26 May 1998, applicants filed international application PCT/EP98/03086, which claimed a priority date of 06 June 1997. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 10 December 1998. The twenty-month period for paying the basic national fee in the United States expired at midnight on 06 February 1999.

On 22 July 1999, applicants filed a TRANSMITTAL LETTER (FORM PTO-1390) for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 22 July 1999, applicants also filed the instant "PETITION TO REVIVE UNDER 37 C.F.R. 1.137(b)".

On 08 September 1999, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(e) were required. The NOTIFICATION set a one-month extendable period for reply.

On 07 March 2000, applicants submitted a RESPONSE TO MISSING REQUIREMENTS UNDER 35 U.S.C. 371, which was accompanied by a five-month extension of time, the fee for a five-month extension of time, the surcharge under 37 CFR 1.492(e), and a declaration of the inventors.

On 20 March 2000, the USPTO mailed a NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 (Form DO/EO/903) indicating, *inter alia*, that the above-identified application had been accepted for entry into the national stage in the United States and according the above-identified application number 35 U.S.C. 102(e) and 371(c) dates of 07 March 2000.

DISCUSSION

A petition to revive the present application under 37 CFR 1.137(b) must include:

- (1) The required reply;
- (2) The petition fee;
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.

As to item (1), applicants submitted the basic national fee on 22 July 1999.

As to item (2), the requisite petition fee of \$1,210.00 was submitted on 22 July 1999.

With regard to item (3), petitioner's statement that "the entire delay in filing U.S. National Phase application from its due date of February 6, 1999 until the filing of this Petition was unintentional" satisfies this requirement.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate.

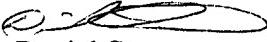
The declaration filed 07 March 2000 complies with 37 CFR 1.497(a)-(b). Accordingly, the requirements under 35 USC 371(c) were satisfied as of that date.

The NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 (Form DO/EO/903) mailed 20 March 2000 was mailed prematurely, i.e., before the decision applicant's petition to revive the application under 37 CFR 1.137(b) had been granted. Because applicants' petition has been granted, the application has met the requirements of 35 U.S.C. 371, and the 35 U.S.C. 102(e) and 371(c) dates accorded in Form DO/EO/903 are correct, Form DO/EO/903 is hereby affirmed.

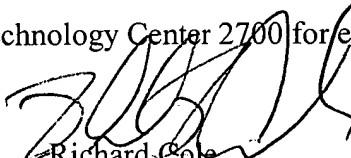
CONCLUSION

The petition under 37 CFR 1.137(b) is **GRANTED** for the reasons set forth above.

This application is being forwarded to Technology Center 2700 for examination.



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